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May 3, 2000

Sent via e-mail and either fax, hand delivery or U.S. Mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

re: Bell Atlantic's Local Service Provider Freeze, D.T.E. 99-105

Dear Secretary Cottrell:

Pursuant to the procedural schedule adopted in this proceeding, the Attorney General submits this letter as his Reply Brief. The Attorney General has reviewed the initial briefs of Bell Atlantic-Massachusetts ("BA-MA"), AT&T Communications of New England, Inc. ("AT&T"), and MCI WorldCom ("MCIW") and, except as specifically stated herein, this review has not caused any change in the positions set forth in his Initial Brief. No attempt has been made to respond to all of the arguments made and positions taken by the carriers. Silence regarding any specific argument raised in the carriers' initial briefs should not be taken as agreement by the Attorney General.

While all parties agree that the Federal Communications Commission ("FCC") has conferred to the Department the authority to determine whether BA-MA should be allowed to offer a local service provider freeze ("LSPF") (FCC Order at ¶ 137; AT&T Brief at 2; MCIW Brief at 4; BA-MA Brief at 10), the parties do not agree on whether now is the time for LSPF. AT&T and MCIW contend that the LSPF is not justified now because: (1) there is no record evidence of bona-fide slamming in the local market; (2) local slamming is highly unlikely to occur; (3) there is not enough local competition at this time; and (4) the LSPF tariff, in its current form, cannot be administered neutrally (MCIW Brief at 5; AT&T Brief at 1-2). BA-MA asserts that the LSPF is justified now given the number of local slamming complaints it has received and the weakened consumer confidence in industry competition resulting from unauthorized changes in telephone service (BA-MA Brief at 5-6). BA-MA also contends that the LSPF tariff as written is reasonable and competitively neutral and that no

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further tariff modifications are needed to assure that objective (BA-MA Brief at 6, 8, 12).

For the reasons set forth herein, the Attorney General reiterates his position that local circumstances necessitate the creation of a modified LSPF option for consumers at this time. The evidentiary record demonstrates that local slamming in Massachusetts has occurred and may increase in the future. Contrary to BA-MA's view on LSPF tariff modifications, however, the Attorney General contends that the LSPF tariff must be modified to reduce the chance of anti competitive conduct by BA-MA against competitive local exchange carriers ("CLECs") and to minimize consumer confusion about preferred carrier freezes (Attorney General Brief at 3). These consumer protection modifications are proposed in addition to the protections already in place at the state and federal level to prevent and remedy anti competitive application of a LSPF by BA-MA against CLECs.

1. The Department should find that a LSPF offering is warranted.

The CLEC position that a LSPF option is not warranted is without merit. The record developed in this case contains ample evidence that customers have complained about unauthorized switches of their local service provider. AT&T and MCIW suggest that the Department ignore this evidence on the basis of their challenges to the accuracy of individual complaints and by unsupported assertions that local slamming is unlikely to occur due to the nature of the service and the market (AT&T Brief at 5-6; MCIW Brief at 13, 15). The Department, however, should take at face value consumer complaints of local slamming and should give consumers tools they can use to protect themselves from the unauthorized switch of the local exchange carrier. While not every consumer may elect to use a LSPF, the Department should allow BA-MA's customers to have the option to protect themselves from unauthorized changes in telephone service. (1)

2. BA-MA's LSPF offering must be modified to alleviate anti competitive effects.

BA-MA contends that the tariff (which consists entirely of a one-paragraph statement) should not be revised to spell out the LSPF terms and conditions or to unilaterally restrict BA-MA from marketing the LSPF in an anti competitive manner (BA-MA Brief at 7). BA-MA promises to implement the tariff in a neutral manner, offer the LSPF under certain specified conditions, and not market or promote LSPF actively (BA-MA Brief at 2, 6). In essence, BA-MA asks the Department to rely on BA-MA's promise not to engage in anti competitive behavior instead of incorporating all LSPF terms and conditions into the tariff. Past experience shows that such coaxing should be evaluated carefully and adequate enforcement mechanisms should be in place to remedy failed promises. If the Department allows the LSPF tariff, the Department must ensure that swift measures are taken to prevent BA-MA from using the LSPF to the disadvantage of competitors.

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In addition to the Attorney General's proposed tariff modifications, AT&T and MCIW suggest other tariff modifications. Of these proposals, the Attorney General does not support AT&T and MCIW's proposal to allow the third party verifier ("TPV") to change carrier requests and lift the LSPF all in one phone call. While this may speed the change process, using the TPV to perform both functions eliminates the extra protection intended by the LSPF. The TPV system does not function perfectly and does not eliminate slamming complaints; hence the need for another layer of protection afforded by the LSPF (FCC Second Report and Order at ¶ 131). Additionally, the Department should reject MCIW's proposed requirement that a LSPF be available only to those customers who have already experienced a "bona fide" slam. The LSPF option should be made available to all BA-MA customers, whether they have been slammed or not.

The Attorney General at this time defers adopting a position on three AT&T/MCIW proposals -- third party administrator ("TPA"), technical problem resolution, and FCC compliance -- because the record does not clearly either support or reject these proposals, and/or the proposals are beyond the scope of this proceeding. The TPA recommendation, to create a neutral third-party administrator to administer carrier change requests and the placing and removing of the LSPF (AT&T Brief at 18, 20; MCIW Brief at 21), appears to have merit, but the record is insufficient to support its adoption. AT&T stated that it and other carriers are exploring the use of a TPA on a national level (AT&T Brief at 18), and the FCC recently decided that, until the industry reaches consensus on the TPA, individual state commissions should handle local slamming disputes arising from the LSPF. (2) Any technical problems regarding application of the LSPF to line sharing, UNE-Platform, or other implementation problems have not been fully explored in this docket and, as with any FCC compliance challenges, should be reviewed in a separate proceeding.

The Attorney General strongly supports the AT&T and MCIW recommendations to make LSPF information available to CLECs on the customer's service record (AT&T Brief at 15, 20; MCIW Brief at 24). This will increase the visibility of the LSPF to the CLEC at an early stage of sales and will reduce the likelihood of an order rejected due to an unremoved LSPF. Also, the Attorney General endorses the pre-approval proposal for sales scripts, quality assurance plans, and educational materials as a means to educate consumers about the LSPF in a neutral manner (AT&T Brief at 20; MCIW Brief at 30, 32). In this context, the Attorney General asserts that BA-MA should be permitted to distribute customer education materials but prohibited from proactively marketing the LSPF until such time as the Department determines that the local market is open to competition.

The Attorney General renews his support for the following modifications: (1) indicating the presence of the LSPF on both the customer service record and on the customer's monthly statement; (2) providing an Internet-based option to lift the LSPF; and (3) developing and distributing customer education materials on the LSPF, its placement, and its removal, through a CLEC collaborative effort within 60 days of the LSPF tariff's approval (Attorney General Brief at 3). These modifications, in addition to the existing protections offered by the FCC and the Department, will help ensure that the LSPF is administered in a competitively-neutral fashion while preserving the protective characteristics of the LSPF. (3)

3. Conclusion

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The Attorney General urges the Department to allow consumers access to the option of placing a freeze on their choice of local service provider, while minimizing the burden the LSPF may place on local competition, as set forth above.

Sincerely,

George B. Dean
Karlen J. Reed
Assistant Attorneys General
Regulated Industries Division

GBD/kr

Enc.

cc: Paula Foley, Hearing Officer (2 copies) (w/enc.)
Mike Isenberg, Director, Telecommunications Division (w/enc.)
Janice McCoy, Senior Analyst, Telecommunications Division (w/enc.)
Service List for D.T.E. 99-105 (w/enc.)
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and)
Energy, on its own motion, as to the propriety of the)
Local Service Provider Freeze terms and conditions set forth)
in the following tariff: M.D.T.E. No. 10, Part A, Section 5,) D.T.E. 99-105
Original of Page 1.1, filed with the Department on)
November 1, 1999, by New England Telephone and Telegraph)

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Company d/b/a Bell Atlantic-Massachusetts)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by e-mail and either hand-delivery, mail, or fax.

Dated at Boston this 3rd day of May 2000.

Karl en J. Reed

Assistant Attorney General

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1. If the frequency of LSPF in the local market mirrors the frequency of preferred interexchange carrier ("PIC") freezes in the long distance market, only about ten percent of BA-MA's customers will sign up for a LSPF (Tr. Vol. 2 at 163).

2. The FCC adopted this position recently, as reported in its FCC News Release, Action by the FCC April 13, 2000, First Order on Reconsideration (FCC No. 00-135), CC Docket No. 94-129.

3. Carriers who do not offer and administer preferred carrier freezes on a nondiscriminatory basis may violate FCC regulations. FCC Second Report and Order at ¶ 132. Moreover, the FCC has created a special docket designed to expedite carrier-against-carrier disputes, known as the "Accelerated (Rocket) Docket," (In the Matter of Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers, Second Report & Order, CC Docket 96-238 (released July 14, 1998)). The Rocket Docket is intended to resolve inter-carrier disputes quickly and efficiently. The Attorney General submits that complaints by CLECs against BA-MA for violating LSPF administration would fit neatly either within this arena or in a similar "Rocket Docket" being finalized by the Department.